

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3328 OF 2011
(Arising out of SLP(C) No.2705/2007)

KANNACHANKANDY CHANDRAN & ORS.

Appellant(s)

VERSUS

PEETIKAKANDY ACHUTHAN & ORS.

Respondent(s)

O R D E R

Leave granted.

This appeal has been preferred against the judgment and order dated 10.08.2006 passed by the High Court of Kerala in C.R.P. No.546 of 2002 and order dated 25.09.2006 in R.P. No.740 of 2006, whereby the High Court has set aside the order of eviction passed by the Rent Control Appellate Authority, Kozhikode and allowed the revision petition filed by the respondents.

The facts which are necessary for the disposal of this appeal are briefly recapitulated hereunder:

The appellants herein are the landlords of the

building premises which is situated in Kozhikode District, Kerala. The said building was given on rent by the father of the appellants, namely, Kannachankandy Kannad (since deceased) to one Peetikakandy Achuthan (respondent No.1 herein) in the year 1986 at a monthly rent of Rs.175/-. The rent was subsequently enhanced to Rs.210/- per month. The rent was paid upto October, 1993 but the rent accrued thereafter remained unpaid by respondent No.1 thereby committing default in payment of arrears of rent.

A petition for eviction of the tenant from the building premises was filed under Section 11(2)(b), 11(3), 11(4)(i), 11(4)(ii) and 11(4)(iii) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (for short, 'the Act'), before the Rent Controller on the ground of arrears of rent, bona fide need, subletting and material alteration. The Rent Controller allowed the said petition in part and ordered eviction under Section 11(2)(b) on the ground of arrears of rent but dismissed the petition on all other grounds.

On appeal by the landlord against the dismissal of the petition on the other grounds, the Rent Control Appellate Authority affirmed the finding of the Rent Controller under Section 11(2)(b) of the Act and remanded the matter to the Rent Controller for fresh decision on other grounds.

After the remand, the Rent Controller found all the grounds against the landlord, including the one under Section 11(2)(b) of the Act and dismissed the eviction petition vide order dated 3.11.1999.

Against the said order passed by the Rent Controller, the landlord preferred an appeal before the Rent Control Appellate Authority. The Rent Control Appellate Authority allowed the appeal of the landlord reversing the findings of the Rent Controller under Sections 11(2)(b), 11(4)(i) and 11(4)(iii) of the Act and eviction was ordered.

Aggrieved by the order of the eviction passed by the Rent Control Appellate Authority, the respondents preferred a civil revision petition before the Kerala High Court. The High Court while

reversing the findings of the Rent Control Appellate Authority under Sections 11(2)(b), 11(4)(i) & 11(4)(iii) of the Act, set aside the order of eviction and allowed the revision petition. The landlord filed a review petition before the High Court contending that after the remand, eviction under Section 11(2)(b) was not pursued before the Rent Control Court as the same had been affirmed by the Rent Control Appellate Authority and remand was ordered only on the grounds other than the one under Section 11(2)(b), and therefore, the Rent Controller should not have considered the claim for eviction under Section 11(2)(b) afresh. The High Court restored the order of eviction only under Section 11(2)(b) and disposed of the review petition.

Hence, the landlords are before us in this appeal, by special leave.

We have heard the learned counsel for the parties and perused the impugned judgment as well as the judgments passed by the Rent Control Appellate Authority.

In our considered view, the High Court has erred in reversing the findings of the Rent Control Appellate Authority by not allowing the eviction, especially when the tenant (1st respondent herein) had acquired another building in the same locality which is suitable for his business. The impugned judgment is, therefore, erroneous and unsustainable and the same is set aside.

The appeal is accordingly allowed. The parties are directed to bear their respective costs.

However, in the facts and circumstances of this case, the respondents are granted one year's time for vacating the premises upon filing usual undertaking in the Registry of this Court within four weeks from today.

.....J
(DALVEER BHANDARI)

.....J
(DEEPAK VERMA)

New Delhi;
April 11, 2011.